

New Ownership Transparency Requirements for Private Corporations in Ontario

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As a result of recently passed amendments to the *Business Corporations Act* (Ontario) (OBCA), private corporations incorporated under that statute will soon be required to maintain a register of individuals with “significant control” over the corporation. These new rules are similar to those enacted for federally incorporated corporations in 2019, and since introduced in British Columbia, Manitoba, and Nova Scotia.

This amendment represents the latest shift in Canadian law towards enhancing transparency around the ultimate ownership and control of corporations, with the intention of assisting law enforcement agencies in targeting money laundering and tax evasion.

The new rules commence in force on January 1, 2023 and will effectively apply only to private Ontario corporations (other than private corporations that are wholly-owned subsidiaries of publicly traded corporations).

Directors, officers, and shareholders who contravene the new rules may be subject to fines of up to \$200,000 or to imprisonment for up to six (6) months.

Who is an “Individual with Significant Control”?

An individual with significant control is someone who:

- Is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that carry twenty-five percent (25%) or more of the voting rights attached to all of the corporation’s outstanding **voting shares**;
- Is the registered or beneficial owner of, or has direct or indirect control or direction over, any number of shares that is equal to twenty-five percent (25%) or more of all of the corporation’s outstanding shares **measured by fair market value**;
- Has any direct or indirect influence that, if exercised, would result in control in fact of the corporation; or
- Is an individual to whom circumstances prescribed by regulation (which have not yet been promulgated) apply.

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The amendments do not explain what will constitute an individual having "direct or indirect control or direction" over shares that it does not own, but they do state that regulations defining those terms may be made.

Whether an individual has influence that could result in "control in fact" of the corporation is a contextual determination that must take into consideration "all factors that are relevant in the circumstances." No detailed guidance is provided regarding what might be considered relevant factors, but the amendments expressly state that the ability to change the board of directors of the corporation need not be a relevant factor. Express exemptions are provided for in the amendments for arm's length dealings between the corporation and an individual where the individual's influence is based on a commercial relationship, such as a franchise, license, lease, distribution, supply, or management agreement.

Two or more individuals are each considered to be an individual with significant control over a corporation if, in respect of ownership of or rights in a significant number of shares of the corporation (i.e., the 25% threshold noted above): (a) such ownership interests or rights are held jointly by those individuals; (b) pursuant to an agreement, such rights are to be exercised jointly or in concert by those individuals; or (c) if the individuals that hold the ownership interests or rights are "related persons" to each other, a term defined in the OBCA which include spouses and children.

Creating and maintaining the register will therefore require corporations to consider not only whether the threshold of share ownership is met, but whether there are individuals who, despite not holding a significant number of shares, are in a position to exercise "significant influence" over the corporation. Further guidance on these definitions may be provided in regulations yet to be enacted.

What Information Must the Register Include?

For each individual with significant control, the register must include the following information:

- Name, date of birth, and last known address
- Jurisdiction of residence for tax purposes
- The date on which the individual became (and if applicable, ceased to be) an individual with significant control
- Description of how the individual meets the definition of significant control
- Any other information that may be provided for in regulations enacted in the future
- A description of the steps taken to identify all individuals with significant control and to ensure that the information in the register is accurate, complete, and up to date

At least once during each financial year of the corporation, the corporation must take reasonable steps to ensure that it has identified all individuals with significant control over the corporation and that the

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information in the register is accurate, complete, and up to date. If the corporation becomes aware of any new information referred to above, the corporation must record that information in the register within fifteen (15) days. Shareholders are required to comply with requests from the corporation for the information required to be included in the register.

Who Has Access to the Register?

The register must be kept at its registered office or at another place in Ontario designated by the directors of the corporation and is not generally available to the public. However, law enforcement agencies, taxing authorities, and other regulatory bodies may request disclosure of a corporation's register for certain investigatory and enforcement purposes, and OBCA corporations must comply with these requests. When published, new regulations are expected to provide further guidance regarding any conditions or restrictions for a corporation's response to requests for its register.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.